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12 Attorneys for Plaintiff

13 Avery Dennison Corporation

14 UNITED STATES DISTRICT COURT

15 CENTRAL DISTRICT OF CALIFORNIA

16 CV10 7931

17 CASE NO. \_\_\_\_\_

18 COMPLAINT

19 AVERY DENNISON  
20 CORPORATION,

21 Plaintiff,

22 vs.

23 3M COMPANY and 3M  
24 INNOVATIVE PROPERTIES  
25 COMPANY,

26 Defendants.

27 Plaintiff Avery Dennison Corporation ("Avery"), for its Complaint against  
28 Defendants 3M Company ("3M Company") and 3M Innovative Properties Company  
("3M Properties") (collectively, "3M"), alleges as follows:

**SUMMARY OF THE ACTION**

1. 3M has nearly a 100% share of the worldwide market for Type XI  
retroreflective sheeting used for highway signage (hereinafter, "the Type XI Sheeting

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1 Market"). This market exists because government agencies frequently specify that only  
2 Type XI sheeting can meet bid requirements.

3 2. 3M has at least a 70% share of the broader worldwide market for high  
4 performance retroreflective sheeting used on highway signage composed of ASTM  
5 International ("ASTM") sheeting Types VIII, IX and XI (hereinafter, "the Broad High  
6 Performance Sheeting Market"). This market exists because government agencies  
7 specify these sheeting types together as those that can meet bid requirements.

8 3. This action arises from various acts of monopolization, fraud, and unfair  
9 competition committed by 3M with respect to the Type XI and Broad High  
10 Performance Sheeting Markets. 3M's illegal and anticompetitive conduct centers  
11 around its manipulation of the standards setting process of ASTM, the private standards  
12 setting organization responsible for creating and maintaining standards for  
13 retroreflective sheeting, illegal contracts that lessen competition, and various  
14 anticompetitive acts, including false advertising and acts of disparagement, designed to  
15 steer customers away from Avery's high performance sheeting products and towards a  
16 new Type XI high performance retroreflective sheeting standard that 3M now claims as  
17 proprietary.

18 4. In or around 2004, 3M approached ASTM about adopting a new standard  
19 for high performance retroreflective sheeting – the Type XI standard. If successful at  
20 ASTM, a new market would emerge for Type XI sheeting.

21 5. At the same time, 3M had issued patents and was prosecuting several  
22 patent applications purportedly covering the same specification embodied in the new  
23 Type XI standard 3M had proposed to ASTM.

24 6. Because there is a perception in the retroreflective sheeting marketplace  
25 that higher sheeting types equate to higher quality products, 3M knew that adoption of a  
26 new Type XI standard by the ASTM would allow it to steer a majority of purchasers in  
27 the Broad High Performance Sheeting Market to the new Type XI Sheeting Market.  
28 3M also knew that its patents would be a significant barrier to anyone wanting to offer

1 a Type XI product, and therefore it stood to further gain monopoly power over the  
2 Broad High Performance Sheeting Market if the Type XI standard passed. In recent  
3 years, 3M's course of conduct has come to be known as a "patent hold up."

4 7. The potential harm to competition that could result from the new standard  
5 3M proposed did not go unnoticed. The other ASTM members (including Avery)  
6 quickly realized what 3M was attempting to do and strenuously objected. In response,  
7 3M represented that it would not use its patents to block competition for products  
8 meeting the Type XI standard. 3M made this representation on several occasions  
9 during the course of the approval process for the new Type XI standard. In at least one  
10 instance, 3M provided written notice that it had withdrawn patent claims related to the  
11 ASTM Type XI standard from consideration by the Patent Office.

12 8. Relying on 3M's representations that it would not use its patents to block  
13 competition, the other ASTM members eventually dropped their negative votes and  
14 agreed to adopt the new Type XI standard.

15 9. Despite 3M's assurances, and unbeknownst to the other ASTM members,  
16 3M continued to prosecute several patent applications allegedly covering the new Type  
17 XI standard. 3M even revived the very claims that it had previously represented had  
18 been withdrawn from the Patent Office. 3M took these actions without ever informing  
19 Avery or the other ASTM members. Instead, 3M remained silent while Avery (and  
20 possibly others) invested substantial resources in the research and development of its  
21 own Type XI sheeting.

22 10. 3M is now doing what it told the other ASTM members it would not do –  
23 using its patents to block competition in the Type XI and Broad High Performance  
24 Sheeting Markets. While actively touting the Type XI standard in the marketplace, 3M  
25 is simultaneously asserting its patents in an attempt to block others from offering their  
26 own Type XI products. 3M is disregarding its earlier representations and attempting to  
27 leverage its patents to further gain monopoly power in the Type XI and Broad High  
28 Performance Sheeting Markets.

1           11. In May 2010, Avery launched the OmniCube™ T-11500 product  
2 (“OmniCube™”), the only other Type XI product currently on the market.

3           12. On June 25, 2010, 3M filed a complaint alleging that Avery’s  
4 OmniCube™ product infringes thirteen patents owned by 3M.

5           13. On July 28, 2010, 3M moved for a preliminary injunction to prevent Avery  
6 from manufacturing or selling its OmniCube™ product during the pendency of the  
7 litigation.

8           14. In addition to the assertion of its patents, 3M has engaged in and continues  
9 to engage in other anticompetitive and predatory acts designed to interfere with Avery’s  
10 ability to market and sell OmniCube™ and other high performance sheeting products.

11           15. For example, 3M’s tactics include the misrepresentation of the quality of  
12 Avery’s products and improper characterization of the performance of its own Type XI  
13 sheeting product as compared to other types of sheeting. On information and belief,  
14 3M has also entered agreements with contractors, who are major customers of high  
15 performance sheeting, that are designed to discourage and prevent these customers of  
16 high performance sheeting products from purchasing anything other than 3M’s  
17 products.

18           16. As a result of its anticompetitive conduct, 3M has restrained trade and  
19 continues to restrain trade in the Type XI and Broad High Performance Sheeting  
20 Markets. Rather than compete against Avery on the merits, 3M is using unlawful and  
21 anticompetitive practices to undermine competition.

22           17. 3M’s actions have injured competition and caused and continue to cause  
23 damage and injury to Avery in its business and property.

24                           **PARTIES**

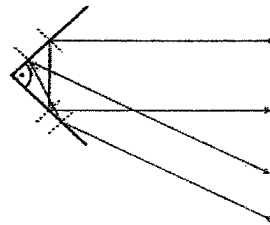
25           18. Avery is a corporation organized and existing under the laws of the State  
26 of Delaware having a principal place of business at 150 North Orange Grove  
27 Boulevard, Pasadena, California 91103.

28

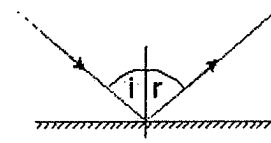


1 article. It is usually manufactured with an adhesive backing that allows for easy  
2 application.

3 26. The retroreflective sheeting at issue is built around the concept of triple  
4 reflectors – prism-like structures where three reflecting surfaces meet at perpendicular  
5 angles, like the way walls in the corner of a room meet. As shown below, these  
6 structures generally reflect light parallel to the way it enters. By contrast, a mirror  
7 reflects light at an angle opposite to its entrance angle.



12 Retroreflector



12 Mirror

13 27. As retroreflective sheeting gained wider use on highway applications, such  
14 as road signs and barricades, ASTM became involved to adopt retroreflective sheeting  
15 standards.

16 28. ASTM is one of the largest standard setting organizations in the world. It  
17 was founded in 1898 by a group of engineers and scientists working to address frequent  
18 breaks in steel rails used in the emerging railroad industry. Their work led to the  
19 standardization of steel rails, which ultimately resulted in higher quality rails and  
20 improved safety for the public. Today, ASTM is widely recognized around the world  
21 for the quality and market relevance of its technical standards.

22 29. ASTM is made up of over 130 technical committees covering a vast array  
23 of industry areas, ranging from metals to the environment. One of ASTM's technical  
24 committees is the committee on "Road and Paving Materials," also referred to as "Main  
25 Committee D04" ("the Main Committee"). The Main Committee is responsible for the  
26 establishment and supervision of over 200 standards related to highway construction  
27 and maintenance, including road signs.

30. The Main Committee is broken up into several subcommittees, one of which is the subcommittee on "Highway Traffic Control Materials," also referred to as Subcommittee D04.38 ("the HTCM Subcommittee").

31. The HTCM Subcommittee is divided into several smaller "task groups" focused on particular areas of highway construction. One of these task groups is the Retroreflective Sheeting Task Group ("the Retroreflective Task Group"). As its name implies, the Retroreflective Task Group focuses on standards related to retroreflective sheeting used on road signs.

32. One of the standards for which the HTCM Subcommittee and the Retroreflective Task Group are responsible is ASTM Specification No. D4956 ("Spec. No. D4956"), the "Standard Specification for Retroreflective Sheeting for Traffic Control." Spec. No. D4956 covers microprismatic, retroreflective sheeting designed for use on traffic control signs, delineators, barricades, and other devices.

33. Spec. No. D4956 has been broken down into eleven different "types" of sheeting ranging in levels of brightness at different observation and entrance angles. The levels of brightness for each type of sheeting are described in tabular format. By way of example, the table for Type XI sheeting is reproduced below:

TABLE 10 Type XI Sheeting<sup>A</sup>

Observation Angle	Entrance Angle	White	Yellow	Orange	Green	Red	Blue	Brown	Fluorescent Yellow-Green	Fluorescent Yellow	Fluorescent Orange
0.1° <sup>B</sup>	-4°	830	620	290	83	125	37	25	660	500	250
0.1° <sup>B</sup>	+30°	325	245	115	33	50	15	10	260	200	100
0.2°	-4°	580	435	200	58	87	26	17	480	350	175
0.2°	+30°	220	165	77	22	33	10	7.0	180	130	66
0.5°	-4°	420	315	150	42	63	19	13	340	250	125
0.5°	+30°	160	110	53	15	23	7.0	5.0	120	90	45
1.0°	-4°	120	90	42	12	18	5.0	4.0	96	72	36
1.0°	+30°	45	34	16	5.0	7.0	2.0	1.0	36	27	14

<sup>A</sup> Minimum Coefficient of Retroreflection ( $R_{\text{min}}$ )  $\text{cd}/\text{ft}^2(\text{cd}\cdot\text{lx}^{-1}\cdot\text{m}^{-2})$ .

<sup>B</sup> Values for 0.1° observation angle are supplementary requirements that shall only apply when specified by the purchaser in the contract or order.

34. On information and belief, most federal, state, and local governments use Spec. No. D4956 in their specifications for various highway products that use retroreflective sheeting.

35. On information and belief, there is a well-recognized perception in the marketplace that higher type numbers translate into better quality sheeting. As a result

1 of this perception, those responsible for highway projects – usually federal and state  
2 departments of transportation (“DOTs”) – typically request, and often require, that the  
3 sheeting used in their projects is the highest type cited in Spec. No. D4956.

4 36. Today, the highest type sheeting cited by Spec. No. D4956 is Type XI.

5 **3M’s Manipulation of the Standards Setting Process**

6 37. In or around 2004, 3M embarked on a course of conduct designed to  
7 manipulate the standards setting process of the ASTM, thereby creating a monopoly for  
8 itself in the Type XI Sheeting Market and expanding its monopoly power in the Broad  
9 High Performance Sheeting Market.

10 38. On December 8, 2004, at an ASTM meeting in Washington, DC, 3M first  
11 introduced the idea of adding a new Type XI standard to Spec. No. D4956. At the  
12 break-out meeting of the Retroreflective Task Group, 3M’s representative presented  
13 3M’s proposal. Because there was insufficient time for discussion, the Retroreflective  
14 Task Group decided to take the issue up in subsequent conference calls.

15 39. On February 1, 2005 and March 29, 2005, the Retroreflective Task Group  
16 held the scheduled conference calls to discuss 3M’s proposal. Because ASTM rules  
17 and procedure did not require formal balloting at the task group level, the members of  
18 the Retroreflective Task Group decided to circulate an informal ballot on the issue of  
19 whether to include a new Type XI standard in Spec. No. D4956.

20 40. The vote on the informal ballot at the task group level resulted in 12  
21 negative votes and 1 positive vote. The only person to vote “yes” for 3M’s proposal  
22 was 3M’s own representative.

23 41. On June 15, 2005, the ASTM held its next meeting in Reno, Nevada. At  
24 this meeting, the Retroreflective Task Group discussed 3M’s earlier proposal to add a  
25 new Type XI standard to Spec. No. D4956. In particular, the Retroreflective Task  
26 Group addressed the rationale behind each negative vote on the informal ballot issued  
27 at the task group level.



1        42. The discussion at the task group level made clear that 3M's patent  
2 positions were the major cause of the negative votes. Members of the Retroreflective  
3 Task Group expressed the opinion that adoption of a new Type XI standard would  
4 create a proprietary specification that only 3M could satisfy.

5        43. For example, the Ohio DOT representative explained that he voted  
6 negative because he did not want to perpetuate proprietary types in Spec. No. D4956.  
7 The Texas DOT representative likewise voted negative because he wanted a less  
8 proprietary specification. Avery's representative voted negative because 3M was  
9 seeking patents concerning the Type XI specification, and Avery did not want to create  
10 a standard for which no other manufacturer could supply a product without subjecting  
11 itself to a patent infringement lawsuit.

12        44. On October 17, 2005, despite the overwhelming majority of informal  
13 negative votes at the task group level, 3M's representative pushed forward a formal  
14 ballot to the HTCM Subcommittee members seeking to add a new Type XI standard to  
15 Spec. No. D4956. The formal ballot at the subcommittee level drew 22 affirmative  
16 votes and only 9 negative votes.

17        45. The drastically different vote obtained at the subcommittee level versus the  
18 task group level was likely a direct result of 3M's manipulation of the ASTM's  
19 membership and voting procedures.

20        46. In December 2004, when 3M introduced its proposal to amend Spec. No.  
21 D4956, the HTCM Subcommittee consisted of approximately 30 members who could  
22 vote on such a proposal. Realizing that it did not have enough support to push its  
23 proposal through the HTCM Subcommittee, 3M began recruiting new members to the  
24 HTCM Subcommittee that it knew would vote in its favor.

25        47. In the months leading up to the October 17, 2005 ballot, many new  
26 members joined the HTCM Subcommittee. A significant portion of the members were  
27 from municipalities. Prior to this time, very few, if any, municipalities were members  
28 of the HTCM Subcommittee. The fact that so many municipality members joined the

1 HTCM Subcommittee at the same time was unusual. The new municipality members,  
2 however, had two things in common. First, they were all customers of 3M. Second,  
3 when an HTCM Subcommittee vote required actual attendance at the meetings, they  
4 allowed 3M to hold their proxies.

5 48. On December 7, 2005, the HTCM Subcommittee held its next meeting in  
6 Dallas, Texas. At that meeting, 3M requested that the HTCM Subcommittee go  
7 forward with a vote to overcome the 9 negative votes cast on the formal ballot measure  
8 for Type XI in October 2005. Such a vote required a two-thirds majority. At least six  
9 of the new municipality members of the HTCM Subcommittee were not present at the  
10 Dallas meeting and were going to cast their votes by proxy. On information and belief,  
11 in all six cases, the persons holding the proxy for the absentee municipality member  
12 were either current or retired employees of 3M. The other HTCM Subcommittee  
13 members, realizing that the onslaught of new members and the use of proxy votes could  
14 produce a skewed result, were able to create a written procedure to deal with the  
15 negative votes over the next few months.

16 49. The procedure the HTCM Subcommittee adopted required each negative  
17 vote to be accompanied by a formal written statement called a "Negative." 3M was  
18 then allowed to formally address each Negative in a written response and each person  
19 who submitted a Negative was allowed the opportunity to rebut 3M's response in  
20 writing. The entire package of Negatives, 3M's responses, and negative vote rebuttals  
21 would then be circulated to the full HTCM Subcommittee and discussed via conference  
22 calls in March 2006.

23 50. Following the December 7, 2005 meeting in Dallas, Avery contacted four  
24 of the new municipality members to confirm its suspicion that the new HTCM  
25 Subcommittee members were not acting on their own initiative but were being directed  
26 by 3M. Avery learned that none of these four members had any idea of the substance  
27 of prior ballots on which they had cast votes by proxy regarding the Type XI standard.  
28 Nor were any of these members aware of any of the deliberations regarding 3M's

1 proposal to add a new Type XI standard to Spec. No. D4956. In fact, none of those  
2 contacted had ever even heard of Spec. No. D4956.

3 51. Like the Negatives at the Retroreflective Task Group, the Negatives  
4 resulting from the HTCM Subcommittee vote on October 17, 2005 once again made  
5 clear that many HTCM Subcommittee members objected to 3M's attempt to create a  
6 proprietary specification.

7 52. For example, the Negative of the Ohio DOT representative explained that  
8 he was objecting because 3M was attempting to "create the illusion of a competitive  
9 environment to the casual user of the specification, when in reality, a proprietary  
10 condition exists."

11 53. Likewise, the Negative of an Avery representative specifically explained  
12 the danger of adopting a new standard potentially covered by 3M's patents:

13 Many members on this Sub-Committee may not realize it,  
14 but the product (DG3) outlined by the current ASTM ballot  
15 is a heavily patented and proprietary product. 3M Company  
16 has filed and received many patents on this product. As  
17 such, adopting the current Type 11 proposal will result in a  
18 proprietary and monopolistic position for 3M.

19 54. Further, the Negative of another Avery representative explained:

20 If we add a Type XI we create the illusion that the purchaser  
21 is specifying a level of performance available from a group  
22 of products. But we know they are in fact creating a sole-  
23 source specification. If a purchaser desires DG3, they should  
24 call it out by name, and justify their wish to specify a sole-  
25 source product and not hide behind an ASTM curtain. Type  
26 XI performance may be patent protected. Adding a Type XI  
27 is also problematic in that several of the performance  
28 requirements in the proposal may be protected by intellectual  
property. Not only are specific designs claimed, certain SIA  
ranges (when measured with cited ASTM procedure) have  
been claimed.

29 55. 3M's written responses to the 9 pending Negatives specifically addressed  
30 the concerns of the HTCM Subcommittee members related to 3M's patents. In its  
31 responses, 3M indicated that it would not use its patents to block others from offering a  
32 product meeting the Type XI standard.

56. For example, in its written response to one of Avery's Negatives, 3M responded that "[t]he intellectual property claims at issue (those that relate to the ASTM performance standards) have been withdrawn from consideration before the U.S. Patent and Trademark Office."

57. On March 25, 2006, in anticipation of the conference calls to discuss the Negatives, 3M's responses to the Negatives and any rebuttals, Avery circulated a PowerPoint presentation to some of the other members of the HTCMT Subcommittee warning of the dangers of adopting a new standard that was potentially covered by 3M's pending patent applications. In that presentation, Avery explained:

Any material that can meet the proposed Type XI will likely violate a 3M patent through: retroreflective performance, design, manufacturing process.

\* \* \*

In [the '83 application], 3M has gone beyond patenting the design or manufacturing, they have patented standardized testing performance!

\* \* \*

Notice, that in order to meet their proposed [Type XI] specification – you **MUST** violate this patent. Granting the specification allows **ONLY** their product – any other products would be in violation and thrown into court!

\* \* \*

Again – this kind of patent turns the specification into a lawsuit trap!

58. In addition, Avery also included a list of several issued patents and pending applications that it believed could be used by 3M to hamper others from offering a Type XI product. Those patents and pending applications included:

U.S. Patent No. 5,981,032  
U.S. Patent No. 6,114,009  
U.S. Patent No. 6,447,878  
U.S. Patent No. 6,120,881  
U.S. Patent No. 6,257,860  
U.S. Patent No. 6,318,987  
U.S. Publication No. 2004/0212887  
U.S. Patent No. 6,386,855  
U.S. Patent No. 5,898,523

U.S. Patent No. 7,152,983  
 (identified by its Publication No. 2004/0174601)  
 U.S. Patent No. 7,156,527  
 (identified by its Publication No. 2004/0174603)  
 U.S. Patent No. 6,253,442  
 U.S. Patent No. 6,884,371  
 U.S. Patent No. 7,309,135  
 (identified by its Publication No. 2005/0180012)

59. On March 27, 2006, the HTCMT Subcommittee held the first conference call to discuss the pending Negatives. After the call, 3M's representative circulated an email confirming that the claims covering ASTM performance standards had been withdrawn. Further, he even included the Notice of Withdrawal issued by the Patent Office for some of those claims:

2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.  
 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution is to close in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) ☒ Claim(s) 1-32 is/are pending in the application.  
 4a) Of the above claim(s) 21-34 and 41-54 is/are withdrawn from consideration.  
 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
 6) ☒ Claim(s) 1-20 and 35-40 is/are rejected.  
 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

60. In his March 27, 2006 email, 3M's representative also stated that "[n]o other claims contained in the application have been granted to date."

61. On March 28, 2006, the HTCMT Subcommittee held the second conference call to discuss the pending Negatives. According to the meeting minutes from that teleconference, a representative from Reflexite Corporation ("Reflexite") specifically asked for "an interpretation of the current patent continuation claim as of January 12, 2006" and whether it "affect[ed] the previous claim withdrawal?"

62. According to the March 28, 2006 meeting minutes, 3M's representative responded to the inquiry from Reflexite by stating that he had spoken with 3M's patent attorney and that "[t]he claims regarding the retroreflectivity at ASTM specific geometries have been withdrawn . . . ."

1       63. On May 30, 2006, the HTCM Subcommittee issued another formal ballot  
2 to allow the HTCM Subcommittee members to vote on each Negative individually.  
3 Pursuant to ASTM voting procedures, each Negative had to be defeated by a two-thirds  
4 majority at the HTCM Subcommittee level before the ballot could proceed to the Main  
5 Committee.

6       64. As a result of the May 30, 2006 formal ballot, each Negative was defeated  
7 by the required two-thirds majority at the HTCM Subcommittee level. The outcome of  
8 the vote, and thus the fate of the 9 pending Negatives, was a direct result of 3M's  
9 manipulation of the ASTM membership process.

10       65. By the time the new ballot issued on May 30, 2006, the HTCM  
11 Subcommittee had swelled to approximately 88 voting members. The vote on the new  
12 ballot resulted in 71 members either abstaining or voting against all 9 of the pending  
13 Negatives. Of those 71 members, 57 had been members of the HTCM Subcommittee  
14 for less than one year. On information and belief, a significant number of the new  
15 members were 3M recruits.

16       66. On October 4, 2006, after 3M had successfully defeated the Negatives at  
17 the HTCM Subcommittee by representing that it had withdrawn patent claims related  
18 to the Type XI standard, the Main Committee issued its own formal ballot on 3M's  
19 proposal to add a new Type XI standard to Spec. No. D4956. The formal ballot at the  
20 Main Committee drew 119 affirmative votes and 11 negative votes.

21       67. As with the vote at the HTCM Subcommittee, ASTM voting procedures  
22 required each Negative vote at the Main Committee level to be accompanied by a  
23 written explanation. Further, before ASTM could officially adopt the ballot measure,  
24 each of the 11 pending Negatives had to be voted down by a two-thirds majority vote at  
25 both the HTCM Subcommittee and Main Committee levels.

26       68. The next ASTM meeting was scheduled for December 6-7, 2006 in  
27 Atlanta, Georgia. Upon information and belief, 3M took measures to ensure that each  
28

1 of the 11 pending Negatives would be defeated by the required two-thirds majority vote  
2 by the HTCM Subcommittee during this meeting.

3 69. On December 6, 2006, the HTCM Subcommittee met to vote on the 11  
4 pending Negatives. Upon information and belief, prior to the HTCM Subcommittee  
5 vote, 3M contacted several of its customers attending a 3M customer seminar in Atlanta  
6 who also happened to be voting members of the HTCM Subcommittee. On  
7 information and belief, some of these customers were the same members whom 3M had  
8 previously recruited to join the HTCM Subcommittee to gain support for its Type XI  
9 proposal and who had granted 3M their proxies on earlier votes. Upon information and  
10 belief, 3M arranged for the transportation of these customers from the 3M customer  
11 seminar to the HTCM Subcommittee meeting to cast their votes.

12 70. On December 6, 2006, the HTCM Subcommittee voted down each of the  
13 11 pending Negatives by the required two-thirds majority of the voting members  
14 present at the HTCM Subcommittee, which included the members that 3M had  
15 transported to the HTCM Subcommittee meeting.

16 71. On December 7, 2006, the Main Committee upheld one of the 11 pending  
17 Negatives dealing with daytime luminescence values. Due to this Negative, the ballot  
18 measure was temporarily defeated.

19 72. Over the next several meetings, the HTCM Subcommittee addressed the  
20 issue concerning daytime luminescence. It also worked on consolidating and  
21 eliminating the specifications for Types VII and X retroreflective sheeting in Spec. No.  
22 D4956.

23 73. In September 2008, 3M reintroduced its proposal to the HTCM  
24 Subcommittee to revise Spec. No. D4956 to include a new Type XI sheeting. By that  
25 time, the issues regarding daytime luminescence had been worked out and acceptable  
26 proposals had been generated for eliminating Types VII and X retroreflective sheeting  
27 in Spec. No. D4946.

28

1           74. In June 2009, the ASTM formally adopted 3M's proposal for the addition  
2 of a new Type XI standard to Spec. No. D4956. In August 2009, the revised Spec. No.  
3 D4956 published with the new Type XI standard.

4           75. At no time prior to adoption of the new Type XI standard did 3M ever  
5 inform Avery or the other HTCM Subcommittee members that 3M had (1) continued to  
6 prosecute patent applications purporting to cover the Type XI standard, (2) that on  
7 August 2, 2007 it revived in a divisional patent application the very claims relating to  
8 the new Type XI standard that it had represented on three previous occasions had been  
9 withdrawn from the Patent Office, or (3) received several issued patents purporting to  
10 cover the new Type XI standard. Instead, 3M remained silent while Avery and others  
11 voted on the Type XI standard thinking the patent issues had been resolved. Avery and,  
12 on information and belief, other HTCM Subcommittee members were unaware of these  
13 facts when the ASTM adopted the new Type XI standard, and could not reasonably  
14 have discovered these facts in light of 3M's misleading conduct. Avery moved forward  
15 with the research and development of its OmniCube™ product.

16                   **3M's Campaign to Shift Consumers to Type XI Sheeting**

17           76. 3M markets and sells a Type XI retroreflective sheeting product known as  
18 Diamond Grade™ DG<sup>3</sup> ("DG3"). 3M states that it began selling its DG3 product in  
19 2005.

20           77. Until Avery introduced its OmniCube™ product earlier this year, 3M's  
21 DG3 product was the only product on the market meeting the Type XI standard adopted  
22 in August 2009.

23           78. Upon information and belief, 3M's advertising campaign and related  
24 marketing activities with respect to its DG3 product are directed in large part toward  
25 persuading end-users to switch from other types of retroreflective sheeting to Type XI.  
26 3M is attempting to shift consumers in the Broad High Performance Sheeting Market to  
27 purchase Type XI sheeting. In so doing, 3M intends to expand its monopoly in the  
28 Broad High Performance Sheeting Market and the Type XI Sheeting Market.



1        79. On information and belief, to facilitate this shift, 3M launched a marketing  
2 campaign falsely representing that Type XI sheeting is significantly brighter than other  
3 types of retroreflective sheeting. As part of this campaign, 3M uses deceptive  
4 advertisements in the form of a video challenge on its website allegedly depicting the  
5 brightness of its DG3 sheeting versus other types of sheeting. On information and  
6 belief, the intent of these advertisements is to persuade end-users to switch from other  
7 types of retroreflective sheeting to DG3.

8        80. On information and belief, 3M also offers a grant program to encourage  
9 state agencies to replace their current road signs with signs made from Type XI  
10 sheeting. On information and belief, 3M intends this grant program to persuade end-  
11 users to switch from other types of retroreflective sheeting to Type XI.

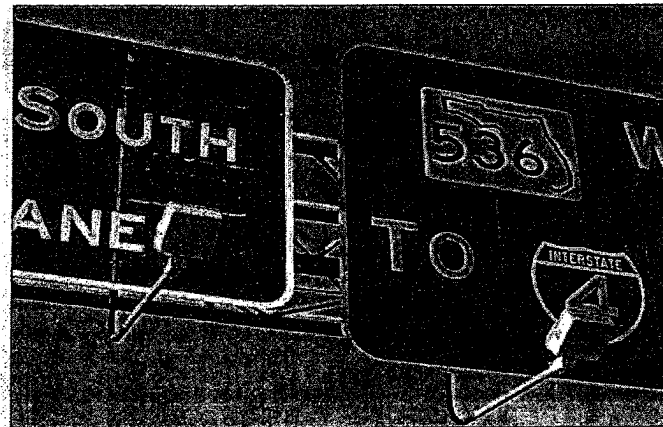
12        **3M's Efforts to Block Avery from Participating in the Broad High**  
13        **Performance Sheeting and Type XI Sheeting Markets**

14        81. Simultaneous with its efforts to shift the Broad High Performance Sheeting  
15 Market to the Type XI Sheeting Market, 3M has taken actions and continues to take  
16 actions to prevent Avery from competing in the Type XI Sheeting Market. 3M has also  
17 engaged in and continues to engage in a course of conduct designed to restrain  
18 competition by preventing Avery from competing in the Broad High Performance  
19 Sheeting Market generally, thereby strengthening its own monopoly position in both  
20 markets.

21        82. For example, despite its earlier representations to the HTCM  
22 Subcommittee, 3M is currently asserting numerous patents against Avery in an attempt  
23 to enjoin the sale of OmniCube™, Avery's Type XI product. On June 25, 2010, 3M  
24 filed a complaint in the United States District Court for the District of Minnesota ("the  
25 Minnesota action") alleging that the OmniCube™ product infringes thirteen patents  
26 owned by 3M. On July 28, 2010, 3M moved for a preliminary injunction in the  
27 Minnesota action seeking to preclude Avery from manufacturing or selling its  
28 OmniCube™ product.

1        83. In addition to the assertion of its patents, 3M has taken several steps to  
2 prevent others from purchasing Avery's high performance sheeting products.

3        84. For example, on information and belief, 3M sent the following picture to a  
4 potential Avery customer in the Broad High Performance Sheeting Market:



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12        85. On information and belief, 3M represented to the customer that the sign on  
13 the left of the image that is peeling and deteriorating was made using Avery's  
14 retroreflective sheeting. On information and belief, 3M made these representations  
15 with the intention of persuading the customer to use 3M's high performance  
16 retroreflective sheeting in place of Avery's product.

17        86. 3M's representations to the potential Avery customer concerning the signs  
18 depicted in ¶84 were false. The sheeting in the picture on the left is not an Avery  
19 product.

20        87. On information and belief, 3M has also entered into agreements with key  
21 contractors who are responsible for the majority of private party purchases and  
22 installations of retroreflective sheeting in the Broad High Performance Sheeting and the  
23 Type XI Sheeting Markets. On information and belief, these agreements contain  
24 provisions that 3M interprets as requiring the contractors to promote and purchase 3M  
25 products whenever a 3M product is identified by name in a bid specification, even  
26 when the bid also states that other products can also meet the specification.

**COUNT 1**  
**SHERMAN ACT §2:**  
**MONOPOLIZATION**

88. Avery incorporates by reference the averments of Paragraphs 1-87 as if fully set forth herein.

89. 3M's conduct described above constitutes monopolization and/or maintenance of monopoly power in the Broad High Performance Sheeting and the Type XI Sheeting Markets in violation of Section 2 of the Sherman Act, 15 U.S.C. § 2.

90. Through the acts described above, 3M successfully persuaded ASTM to include a new Type XI standard in Spec. No. D4956.

91. Through the acts described above, 3M undertook a deceptive advertising and product disparagement campaign designed to steer customers away from other high performance sheeting and to its Type XI product.

92. On information and belief, as a result of 3M's efforts, the Broad High Performance Sheeting Market has shifted and continues to shift to the new Type XI sheeting.

93. On information and belief, 3M knew that the market for high performance retroreflective sheeting would shift to Type XI sheeting if ASTM adopted a new Type XI standard.

94. On information and belief, 3M's conduct in asserting patents allegedly covering the Type XI standard as well as its advertising, product disparagement campaign, and agreements with prime contractors has given it monopoly power in the Broad High Performance Sheeting Market and the Type XI Sheeting Market.

95. On information and belief, 3M currently has a nearly 100% share of the Type XI Sheeting Market.

96. On information and belief, 3M currently has at least a 70% share of the Broad High Performance Sheeting Market. On information and belief, 3M's share of the Broad High Performance Sheeting Market is increasing as more and more customers shift from sheeting Types VIII and IX to Type XI.

10            99. Avery has suffered irreparable injury by reason of the acts, practices, and  
11      conduct of 3M alleged above and will continue to suffer such injury unless and until the  
12      Court enjoins such acts, practices, and conduct. Avery has no adequate remedy at law.

15        100. Avery incorporates by reference the averments of Paragraphs 1-99 as if  
16 fully set forth herein.

17            101. 3M's conduct described above constitutes attempted monopolization of the  
18 Broad High Performance Sheeting Market and the Type XI Sheeting Market in  
19 violation of Section 2 of the Sherman Act, 15 U.S.C. § 2.

28



1        109. 3M 's agreements with key contractors who are customers in the Broad  
2 High Performance Sheeting Market unreasonably restrained trade and foreclosed a  
3 substantial share of the Broad High Performance Sheeting Market and the Type XI  
4 Sheeting Market in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

5        110. 3M's agreements with the key contractors unreasonably restrained trade  
6 and restricted the access of 3M's competitors to significant channels of distribution,  
7 thereby restraining competition in the Broad High Performance Sheeting Market and  
8 Type XI Sheeting Market while also foreclosing substantial interstate and foreign  
9 commerce.

10        111. The purpose and effect of 3M's agreements with key contractors is to  
11 dissuade customers in the Broad High Performance Sheeting Market and the Type XI  
12 Sheeting Market from purchasing products other than 3M's when a 3M product name is  
13 identified in a specification even though the specification also states that other  
14 companies' products can also satisfy the specification. Through these agreements 3M  
15 restrains trade and forecloses competition in the Broad High Performance Sheeting  
16 Market and the Type XI Sheeting Market.

17        112. By reason of 3M's violation of Section 1 of the Sherman Act, Avery has  
18 been injured in its business or property, including the loss of past, present, and future  
19 profits, the loss of customers and potential customers, the loss of goodwill and product  
20 image, and the prospective harm of its high performance retroreflective sheeting  
21 business.

22        113. Avery has suffered irreparable injury by reason of the acts, practices, and  
23 conduct of 3M described above and will continue to suffer such injury unless and until  
24 the Court enjoins such acts, practices, and conduct. Avery has no adequate remedy at  
25 law.

26

27

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**COUNT 4**  
**CAL. BUS. & PROF. CODE SECTION 16720:**  
**THE CARTWRIGHT ACT**

114. Avery incorporates by reference the averments of Paragraphs 1-113 as if fully set forth herein.

115. 3M's agreements with other ASTM members who committed to vote for 3M's proposed new Type XI standard – such as those 3M convinced to join the HTCMT Subcommittee, those for whom 3M held a proxy, and those 3M customers attending 3M seminars that 3M transported to HTCMT Subcommittee votes – unreasonably restrained trade and foreclosed a substantial share of the Broad High Performance Sheeting Market and the Type XI Sheeting Market in violation of Section 16720 of the California Business and Professions Code (“the Cartwright Act”).

116. 3M's agreements with other ASTM members unreasonably restrained trade and restricted the access of 3M's competitors to significant channels of distribution, thereby restraining competition in the Broad High Performance Sheeting Market and Type XI Sheeting Market while also foreclosing substantial trade within this state.

117. The purpose and effect of 3M's agreements with other ASTM members was to obtain passage of a new standard that 3M could use in combination with its patents to restrain trade and foreclose competition in the Broad High Performance Sheeting Market and Type XI Sheeting Market.

118. 3M's agreements with key contractors who are customers in the Broad High Performance Sheeting Market unreasonably restrained trade and foreclosed a substantial share of the Broad High Performance Sheeting Market and the Type XI Sheeting Market in violation of Section 16720 of the California Business and Professions Code (“the Cartwright Act”).

119. 3M's agreements with the key contractors unreasonably restrained trade and restricted the access of 3M's competitors to significant channels of distribution,

1 thereby restraining competition in the Broad High Performance Sheeting Market and  
2 the Type XI Sheeting Market while also foreclosing substantial trade within this state.

3 120. The purpose and effect of 3M's agreements with key contractors is to  
4 dissuade customers in the Broad High Performance Market from purchasing products  
5 other than 3M's when a 3M product name is identified in a specification even though  
6 the specification also states that other companies' products can also satisfy the  
7 specification. Through these agreements 3M restrains trade and forecloses competition  
8 in the Broad High Performance Sheeting Market and Type XI Sheeting Market.

9 121. By reason of 3M's violation of Section 16720 of the California Business  
10 and Professions Code, Avery has been injured in its business or property, including the  
11 loss of past, present, and future profits, the loss of customers and potential customers,  
12 the loss of goodwill and product image, and the prospective harm of its high  
13 performance retroreflective sheeting business.

14 122. Avery has suffered irreparable injury by reason of the acts, practices, and  
15 conduct of 3M described above and will continue to suffer such injury unless and until  
16 the Court enjoins such acts, practices, and conduct. Avery has no adequate remedy at  
17 law.

18 **COUNT 5**  
19 **LANHAM ACT §43(a):**  
**FALSE ADVERTISING**

20 123. Avery incorporates by reference the averments of Paragraphs 1-122 as if  
21 fully set forth herein.

22 124. By reason of the conduct described above regarding 3M's depiction of the  
23 brightness of its DG3 product in the video challenge advertisement on its website, 3M  
24 has, in connection with goods or services, used a false or misleading description of fact,  
25 or a false or misleading representation of fact, that in commercial advertising or  
26 promotion, misrepresents the nature, characteristics, or qualities of 3M's goods or  
27 services in violation of section 43(a) of the Lanham Act, 15 U.S.C. §1125(a).



1 125. 3M's statements and representations have actually deceived or have the  
2 tendency to deceive a substantial segment of its audience.

3 126. 3M's deception is material and is likely to influence the purchasing  
4 decisions of customers in the Broad High Performance and Type XI Sheeting Markets.

5 127. 3M's false and misleading statements and representations were and are  
6 made in interstate commerce.

7 128. 3M's improper conduct described above has been willful and deliberate,  
8 thereby making this an exceptional case under the Lanham Act.

9 129. By reason of 3M's violations of section 43(a) of the Lanham Act, Avery  
10 has been injured in its business or property, including the loss of past, present, and  
11 future profits, the loss of customers and potential customers, the loss of goodwill and  
12 product image, and the prospective harm of its high performance and Type XI sheeting  
13 businesses.

14 130. Avery has suffered irreparable injury by reason of the acts, practices, and  
15 conduct of 3M alleged above and will continue to suffer such injury unless and until the  
16 Court enjoins such acts, practices, and conduct. Avery has no adequate remedy at law.

17 **COUNT 6**  
18 **CAL. BUS. & PROF. CODE §17500:**  
**FALSE ADVERTISING**

19 131. Avery incorporates by reference the averments of Paragraphs 1-130 as if  
20 fully set forth herein.

21 132. By reason of the conduct described above regarding 3M's depiction of the  
22 brightness of its DG3 product in the video challenge advertisement on its website, 3M  
23 has engaged in false advertising in violation of Section 17500 of the California  
24 Business and Professions Code.

25 133. By reason of the conduct described above, 3M has made statements in  
26 connection with the sale or disposition of goods or services that are untrue or  
27 misleading.  
28



1 been withdrawn; revival of the patent claims allegedly covering the ASTM  
2 performance standards; failure to disclose that it had revived the patent claims  
3 allegedly covering ASTM performance standards; failure to disclose that patents had  
4 issued allegedly covering the ASTM performance standards; breach of its duties to  
5 ASTM and ASTM members (including Avery) by misappropriating ASTM standards  
6 and goodwill; and impediment of those selling products in compliance with Spec. No.  
7 D4956 (including Avery) by asserting baseless patent infringement claims.

8 142. 3M's business acts or practices are also unfair and fraudulent based on,  
9 *inter alia*, 3M's use of a false or misleading description of fact to portray its own Type  
10 XI product in relation to those of its competitors; false or misleading representations of  
11 fact in portraying the quality of its competitors' products, including Avery's products;  
12 and agreements with key contractors, who are major customers of high performance  
13 sheeting, that are designed to discourage and prevent these customers of high  
14 performance sheeting products from purchasing anything other than 3M's products.

15 143. 3M's statements and representations are such that a significant portion of  
16 the general consuming public or targeted consumers, acting reasonably under the  
17 circumstances, will be misled.

18 144. 3M's business acts or practices were and are intended to restrain trade in  
19 California by preventing its competitors from marketing and selling high performance  
20 retroreflective sheeting products in this state.

21 145. By reason of the conduct described above, regarding 3M's depiction of the  
22 brightness of its DG3 product in the video challenge advertisement on its website, 3M  
23 has engaged in false advertising in violation of Section 17200 of the California  
24 Business and Professions Code.

25 146. By reason of the conduct described above, 3M has made statements in  
26 connection with the sale or disposition of goods or services that are untrue or  
27 misleading.

1 147. Upon information and belief, 3M knew, or by the exercise of reasonable  
2 care should have known, that the statements were untrue or misleading.

3 148. Avery asserts this claim for unfair competition in its own name only and  
4 does not act for the interest of any other person or entity or for the general public.

5 149. By reason of 3M's unfair competition, Avery has been injured in its  
6 business or property, including the loss of past, present, and future profits, the loss of  
7 customers and potential customers, the loss of goodwill and product image, and the  
8 prospective harm of its high performance and Type XI sheeting businesses.

9 150. Avery has suffered irreparable injury by reason of the acts, practices, and  
10 conduct of 3M described above and will continue to suffer such injury unless and until  
11 the Court enjoins such acts, practices, and conduct. Avery has no adequate remedy at  
12 law.

13 **COUNT 8**  
14 **COMMON LAW UNFAIR COMPETITION**

15 151. Avery incorporates by reference the averments of Paragraphs 1-150 as if  
16 fully set forth herein.

17 152. 3M's conduct described above constitutes common law unfair  
18 competition.

19 153. 3M's conduct constitutes unfair competition based on, *inter alia*, its  
20 inducement of the ASTM to include a new Type XI standard; manipulation of the  
21 ASTM voting procedures to insure passage of the new Type XI standard; representation  
22 that its patent claims concerning the ASTM performance standards had been  
23 withdrawn; revival of the patent claims allegedly covering the ASTM performance  
24 standards; failure to disclose that it had revived the patent claims allegedly covering  
25 ASTM performance standards; failure to disclose that patent claims had issued  
26 allegedly covering the ASTM performance standards; breach of its duties to ASTM and  
27 ASTM members (including Avery) by misappropriating ASTM standards and  
28

1 goodwill; and impediment of those selling products in compliance with Spec. No.  
2 D4956 (including Avery) by asserting baseless patent infringement claims.

3 154. 3M's business acts or practices are also unfair and fraudulent based on,  
4 *inter alia*, 3M's use of a false or misleading description of fact to portray its own Type  
5 XI product in relation to those of its competitors; false or misleading representations of  
6 fact in portraying the quality of its competitors' products, including Avery's products;  
7 and agreements with key contractors, who are major customers of high performance  
8 sheeting, that are designed to discourage and prevent these customers of high  
9 performance sheeting products from purchasing anything other than 3M's products.

10 155. 3M's statements and representations are such that a significant portion of  
11 the general consuming public or targeted consumers, acting reasonably under the  
12 circumstances, will be misled.

13 156. 3M's business acts or practices were and are intended to restrain trade in  
14 California by preventing its competitors from marketing and selling high performance  
15 retroreflective sheeting products in this state.

16 157. 3M's conduct also constitutes unfair competition based on its intentional  
17 interference with the business relationships between Avery and its customers.

18 158. As described above, an economic relationship existed between Avery and  
19 prospective customers, seeking bids for projects requiring the use of retroreflective  
20 sheeting products.

21 159. With respect to those bids, a probability of economic benefit to Avery  
22 existed based on the relationships between Avery and its customers.

23 160. 3M knew of the relationships between Avery and its customers.

24 161. By reason of the conduct described above, 3M intended to disrupt the  
25 relationships between Avery and its customers.

26 162. By reason of the conduct described above, 3M actually disrupted the  
27 relationships between Avery and its customers.  
28

1 163. By reason of 3M's unfair competition, Avery has been injured in its  
2 business or property, including the loss of past, present, and future profits, the loss of  
3 customers and potential customers, the loss of goodwill and product image, and the  
4 prospective harm of its high performance and Type XI sheeting businesses.

5 164. Avery has suffered irreparable injury by reason of the acts, practices, and  
6 conduct of 3M described above and will continue to suffer such injury unless and until  
7 the Court enjoins such acts, practices, and conduct. Avery has no adequate remedy at  
8 law.

9 **COUNT 9**  
10 **FRAUD AND DECEIT**

11 165. Avery incorporates by reference the averments of Paragraphs 1-164 as if  
12 fully set forth herein.

13 166. By reason of the conduct described above, 3M has engaged in fraud and  
14 deceit under the common law, codified in California at Sections 1709 and 1710 of the  
15 Cal. Civil Code.

16 167. 3M represented to Avery and other ASTM members that if ASTM adopted  
17 a new Type XI standard, it would withdraw patent claims concerning the ASTM  
18 standard and not use its patents to block the introduction of other companies' products  
19 meeting the Type XI standard.

20 168. 3M made the foregoing representations knowing them to be false and with  
21 the intent of inducing reliance on its representations. 3M did not disclose to Avery or  
22 other ASTM members that it had no intention of following through on its  
23 representations.

24 169. After representing to the ASTM members that it was withdrawing patent  
25 claims related to the Type XI standard, 3M had a duty to inform the ASTM members  
26 that it intended to and did revive those claims.

27 170. 3M failed to make such disclosures and engaged in affirmative  
28 misrepresentations despite knowing that it was required to disclose such information

1 after informing the other ASTM members that it was withdrawing patent claims  
2 allegedly covering the Type XI standard. In light of its prior representations, 3M's  
3 silence was material.

4 171. On numerous occasions, while 3M representatives served on the  
5 Retroreflective Task Group and HTCM Subcommittee, attended ASTM meetings,  
6 worked on the proposal to add a new Type XI standard to Spec. No. D4956, and met  
7 individually with the other ASTM members, 3M failed to disclose material information  
8 regarding its patents and pending applications.

9 172. 3M intended to induce the other members of the ASTM to adopt the new  
10 Type XI standard allegedly covered by its patents. 3M knew that the other ASTM  
11 members would reasonably rely on its failure to disclose its patents and pending  
12 applications in adopting the new Type XI standard in light of 3M's prior  
13 representations that it was withdrawing patent claims concerning the Type XI standard.  
14 3M further knew that the other ASTM members would consider 3M's failure to  
15 disclose its patents and pending applications as a representation that 3M had no such  
16 patents or pending applications for which disclosure was required. 3M also knew that  
17 the other ASTM members would consider 3M's failure to disclose its patents and  
18 pending applications as a representation that 3M would not assert any patents allegedly  
19 covering the new Type XI standard against the other ASTM members in the future.

20 173. The ASTM adopted the new Type XI standard in justifiable reliance on  
21 3M's silence, misleading conduct, and affirmative misrepresentations that 3M was  
22 withdrawing patent claims related to the Type XI standard.

23 174. Avery reasonably relied on 3M's representations that it would withdraw its  
24 patent claims related to the ASTM Type XI performance standard and not use its  
25 patents to prevent the introduction of a product complying with the Type XI  
26 performance standard. In reliance thereon, Avery invested substantial resources in the  
27 research and development of its OmniCube™ product.

28

1 175. By reason of 3M's fraud and deceit, Avery has been injured in its business  
2 or property, including the loss of past, present, and future profits, the loss of customers  
3 and potential customers, the loss of goodwill and product image, and the prospective  
4 harm of its high performance and Type XI sheeting businesses.

5 176. Avery has suffered irreparable injury by reason of the acts, practices, and  
6 conduct of 3M described above and will continue to suffer such injury unless and until  
7 the Court enjoins such acts, practices, and conduct. Avery has no adequate remedy at  
8 law.

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Avery seeks the following relief:

11 (A) A judgment that 3M has violated Sections 1 and 2 of the Sherman Act, 15  
12 U.S.C. §§1 and 2; Section 43(a) of the Lanham Act, 15 U.S.C. §1125(a); Sections  
13 16720, 17200, and 17500 of the California Business and Professions Code; and that  
14 3M's conduct constitutes unfair competition, fraud, and deceit;

15 (B) Pursuant to at least 15 U.S.C. §§15(a) and 1117, trebled damages resulting  
16 from 3M's violations of the Sherman Act and the Lanham Act;

17 (C) Pursuant to at least 15 U.S.C. §§26 and 1116 and California Business and  
18 Professions Code §17203, an injunction to prevent 3M's continued violations of the  
19 Sherman Act, the Lanham Act, and the California Business and Professions Code;

20 (D) Pre-judgment and post-judgment interest at the maximum legal rate;

21 (E) Avery's costs, expenses, and reasonable attorneys' fees in bringing this  
22 action; and

23 (F) Such other relief as the Court may deem just and proper.

24 **DEMAND FOR JURY TRIAL**

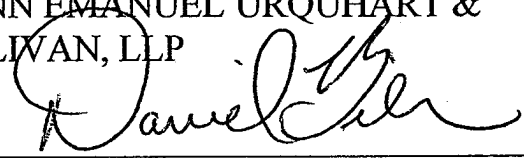
25 Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Avery demands a  
26 trial by jury on all issues so triable.



1 DATED: October 21, 2010

QUINN EMANUEL URQUHART &  
SULLIVAN, LLP

2  
3 By

  
David Bilsker

4  
5 *Attorneys for Avery Dennison Corporation*  
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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

**NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY**

This case has been assigned to District Judge A. Howard Matz and the assigned discovery Magistrate Judge is Ralph Zarefsky.

The case number on all documents filed with the Court should read as follows:

**CV10- 7931 AHM (RZx)**

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

=====

**NOTICE TO COUNSEL**

*A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).*

Subsequent documents must be filed at the following location:

☒ **Western Division**  
312 N. Spring St., Rm. G-8  
Los Angeles, CA 90012

☐ **Southern Division**  
411 West Fourth St., Rm. 1-053  
Santa Ana, CA 92701-4516

☐ **Eastern Division**  
3470 Twelfth St., Rm. 134  
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

COPY

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA  
CIVIL COVER SHEET

<b>I (a) PLAINTIFFS</b> (Check box if you are representing yourself <input type="checkbox"/> ) AVERY DENNISON CORPORATION	<b>DEFENDANTS</b> 3M COMPANY and 3M INNOVATIVE PROPERTIES COMPANY
<b>(b) Attorneys</b> (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.) QUINN EMANUEL URQUHART & SULLIVAN, LLP David Blisker (Bar No. Bar No. 152383) 50 California Street, 22nd Floor San Francisco, CA 94111 Tel: 415/875-6600	<b>Attorneys (If Known)</b>

<b>II. BASIS OF JURISDICTION</b> (Place an X in one box only.)  <input type="checkbox"/> 1 U.S. Government Plaintiff <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)  <input type="checkbox"/> 2 U.S. Government Defendant <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	<b>III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only</b> (Place an X in one box for plaintiff and one for defendant.) <table border="1"><thead><tr><th></th><th>PTF</th><th>DEF</th><th></th><th>PTF</th><th>DEF</th></tr></thead><tbody><tr><td>Citizen of This State</td><td><input type="checkbox"/> 1</td><td><input type="checkbox"/> 1</td><td>Incorporated or Principal Place of Business in this State</td><td><input type="checkbox"/> 4</td><td><input type="checkbox"/> 4</td></tr><tr><td>Citizen of Another State</td><td><input type="checkbox"/> 2</td><td><input type="checkbox"/> 2</td><td>Incorporated and Principal Place of Business in Another State</td><td><input type="checkbox"/> 5</td><td><input type="checkbox"/> 5</td></tr><tr><td>Citizen or Subject of a Foreign Country</td><td><input type="checkbox"/> 3</td><td><input type="checkbox"/> 3</td><td>Foreign Nation</td><td><input type="checkbox"/> 6</td><td><input type="checkbox"/> 6</td></tr></tbody></table>		PTF	DEF		PTF	DEF	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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**IV. ORIGIN** (Place an X in one box only.)  
☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify): ☐ 6 Multi-District Litigation ☐ 7 Appeal to District Judge from Magistrate Judge

**V. REQUESTED IN COMPLAINT: JURY DEMAND:** ☒ Yes ☐ No (Check 'Yes' only if demanded in complaint.)  
**CLASS ACTION under F.R.C.P. 23:** ☐ Yes ☒ No **MONEY DEMANDED IN COMPLAINT: \$** \_\_\_\_\_

**VI. CAUSE OF ACTION** (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

15 U.S.C. §§ 1, 2, 1125 (a)Plaintiff alleges the defendants violated Sections 1 and 2 of the Sherman Act, Section 43(a) of the Lanham Act, the Cartwright Act, and various state codes and common law.

**VII. NATURE OF SUIT** (Place an X in one box only.)

<b>OTHER STATUTES</b> <input type="checkbox"/> 400 State Reapportionment <input checked="" type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Act <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Info. Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes	<b>CONTRACT</b> <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise <b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>TORTS</b> <b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Fed. Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury-Med Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus-Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<b>TORTS</b> <b>PERSONAL INJURY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability <b>BANKRUPTCY</b> <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 American with Disabilities - Employment <input type="checkbox"/> 446 American with Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus/Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <b>FORFEITURE/PENALTY</b> <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) (405(g)) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609
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FOR OFFICE USE ONLY: Case Number:

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA**  
**CIVIL COVER SHEET**

**VIII(a). IDENTICAL CASES:** Has this action been previously filed in this court and dismissed, remanded or closed? ☒ No ☐ Yes

If yes, list case number(s): \_\_\_\_\_

**VIII(b). RELATED CASES:** Have any cases been previously filed in this court that are related to the present case? ☒ No ☐ Yes

If yes, list case number(s): \_\_\_\_\_

**Civil cases are deemed related if a previously filed case and the present case:**

- (Check all boxes that apply) ☐ A. Arise from the same or closely related transactions, happenings, or events; or  
☐ B. Call for determination of the same or substantially related or similar questions of law and fact; or  
☐ C. For other reasons would entail substantial duplication of labor if heard by different judges; or  
☐ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

**IX. VENUE:** (When completing the following information, use an additional sheet if necessary.)

(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named plaintiff resides.

☐ Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles County	

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named defendant resides.

☐ Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
	Minnesota

(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** claim arose.

**Note: In land condemnation cases, use the location of the tract of land involved.**

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles County	Various Other Counties and States

\* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

**Note:** In land condemnation cases, use the location of the tract of land involved

**X. SIGNATURE OF ATTORNEY (OR PRO PER):** \_\_\_\_\_

Date 10/21/10

**Notice to Counsel/Parties:** The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

**Key to Statistical codes relating to Social Security Cases:**

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

AVERY DENNISON CORPORATION,

CASE NUMBER

PLAINTIFF(S)

**CV10 7931 AHM (RZx)**

v.

3M COMPANY and 3M INNOVATIVE PROPERTIES  
COMANY,**SUMMONS**

DEFENDANT(S).

TO: DEFENDANT(S): 3M COMPANY; 3M INNOVATIVE PROPERTIES COMPANY

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached ☒ complaint ☐ amended complaint ☐ counterclaim ☐ cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, David Blisker, whose address is 50 California Street, 22nd Floor, San Francisco, CA 94111. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Clerk, U.S. District Court

Dated: October 21, 2010By: CHRISTOPHER POWERS  
Deputy Clerk

(Seal of the Court)

*[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(a)(3)].*